STATE OF ALASKA
v.
STEVE SARAKOVIKOFF ET AL.

IBLA 77-328, 78-146, 78-251 Decided October 6, 1980

Petition for partial reconsideration of the Board's decision in State of Alaska, 42 IBLA 94 (1979), ordering the State of Alaska to elect either to initiate a private contest against three Native allotment applications or waive such right and appeal directly to the Board. AA-5954, AA-2939, AA-5929.

Petition granted; case files remanded for further action.

Alaska: Native Allotments--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Private Contests

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

APPEARANCES: Thomas E. Meacham, Esq., Assistant Attorney General, State of Alaska for appellant; Bruce C. Twomley, Esq., Alaska Legal Services Corp., for appellees; John M. Allen, Esq., Regional Solicitor, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated August 16, 1979, this Board remanded various cases involving appeals filed by the State of Alaska from decisions

rendered by the Alaska State Office, Bureau of Land Management. That decision was styled State of Alaska, and is reported at 42 IBLA 94 (1979). In essence that decision vacated the decision of the BLM State Office and remanded the case files to afford the State of Alaska specified periods of time in which either to file a private contest or elect to appeal directly to the Board, thereby waiving its right to file such a contest. By the terms of that decision, the time periods commenced as of the date of its rendition.

On January 28, 1980, the State of Alaska filed a petition with this Board stating that it had never received a copy of the Board's decision and was only made aware of the fact of the issuance of that decision on January 17, 1980. The State of Alaska noted that all relevant time periods expired prior to the time it stated that it became aware of the Board's decision, and that unless the Board afforded it an additional opportunity to comply with the mandates of the Board's decision, the rights of the State and its citizens would be thereby prejudiced.

By order of February 5, 1980, the Board entered a stay in its decision of August 16, 1979, and invited all parties to file comments with the Board concerning this matter. By submissions of March 14, 1980, and March 20, 1980, the Anchorage Office of the Alaska Legal Services Corporation (ALSC) filed specific objections to granting the State's motion with respect to the three Native allotment applications which are the subject of this order. (Steve Sarakovikoff, AA-5954; Frank Stickwan, AA-2939; and Elsie Stickwan, AA-5929.) The objections of ALSC were premised on an alleged lack of standing by the State of Alaska to object to these three allotments.

In its order of May 29, 1980, this Board granted the request of the State of Alaska for the grant of additional time in all of the other appeals involved in the original decision in State of Alaska, supra. With respect to the three instant appeals, however, this board noted that the precise issue presented had not heretofore been examined by the Board, and the Board reserved ruling on that question.

Succinctly stated, ALSC contends that since the lands embraced by the applications of Sarakovikoff and Frank Stickwan are within Native core townships which the Native villages are required to select under section 12(a)(1) of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 701, 43 U.S.C. § 1611(a)(1) (1976), the State of Alaska has no viable claim to the lands embraced within those two allotments. With respect to the allotment application of Elsie Stickwan, ALSC argues that inasmuch as the land involved in her application has been the subject of an interim conveyance to a Native village corporation, the State similarly lacks any cognizable claim to the land embraced by the allotment application. Thus, ALSC contends that the State of Alaska lacks the necessary interest in the land to confer standing to maintain a private contest.

In State of Alaska, 41 IBLA 315 (1979), the Board examined the question of the standing of the State of Alaska to contest Native allotment applications which were included in selections by Native villages. The Board noted:

> Although under ANCSA final approval of village selections would require rejection of conflicting State selections, as the State has pointed out, the villages here have selected more acreage than allowed to them under ANCSA. Therefore, until there has been a final determination of the areas granted to the villages, the State retains its interest in the land by its selection application and the possibility that its interest may ultimately be defeated does not take away its present interest and standing. Any doubt about the State's standing to challenge Native claims conflicting with its selection rights has been resolved by the United States Court of Appeals for the District of Columbia in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied, 99 S.Ct. 733 (1979).

In Koniag, Inc. v. Andrus, supra, the Court of Appeals for the District of Columbia reversed a decision of the district court that the State of Alaska lacked sufficient standing to pursue an administrative appeal, within the Department, from a determination of Native village eligibility. In those cases, unlike the appeal at bar, the State had not filed State selections for the contested lands, but rather based its standing on the possibility that some of the land selected by villages might have been selected by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339 (1958), and thus the State had an interest in preventing unqualified villages from obtaining rights under ANCSA.

The court, in Koniag, examined the asserted interest of the State to determine whether the State was a "party aggrieved" within the meaning of 43 CFR 4.700. It took specific notice of the fact that they were "not dealing with Article III considerations here; rather, the inquiry is whether the Secretary has violated his own regulations. In light of the broad reading which the Secretary has given the term 'party aggrieved' we cannot say that permitting the State of Alaska to appeal * * * was a plainly erroneous interpretation of the regulations." 580 F.2d at 608.

The regulation which authorizes the filing of a private contest, however, requires a considerably higher showing than merely establishing that a party is aggrieved. The contest regulation, 43 CFR 4.450-1, provides:

> Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in land * * * may initiate proceedings to have the

> claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein.

The question of what constitutes a claim of title to or an interest in land has been examined in many prior cases. Thus, we have held a party holding an easement may contest a mining claim. State of California v. Doria Mining and Engineering Corp., 17 IBLA 380, 386 (1974), aff'd, Doria Mining & Engineering Corp. v. Morton, 420 F. Supp. 837 (D.Cal. 1976) vacated and remanded on other grounds, 608 F.2d 1255 (9th Cir. 1979). Similar standing was recognized for the holder of a Forest Service special use permit. Duguid v. Best, 291 F.2d 235 (9th Cir. 1961), cert. denied, 372 U.S. 906 (1963). A party has been held to have standing to bring a private contest where he is the holder of a grazing lease issued pursuant to section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1976). Thomas v. DeVilbiss, 10 IBLA 56, 57 (1973), aff'd, Thomas v. Morton, 408 F. Supp. 1361 (D. Ariz. 1976), aff'd, Thomas v. Andrus, 552 F.2d 871 (9th Cir. 1977). Most recently, in United States v. United States Pumice Co., 37 IBLA 153 (1978), this Board examined the interest necessary to enable a party to initiate a private contest. Therein, we expressly noted that the "interest in the land" to which the regulation adverts refers to "an interest which must be grounded on a specific statutory grant." 37 IBLA at 159, n.4.

We recognize that, in one sense, the interest claimed by the State of Alaska is clearly grounded in a specific statutory grant, viz., the Alaska Statehood Act, supra. ALSC, however, points out that, under ANCSA, State selections are subordinated to selections made by Native villages, and, as regards the allotment applications of Sarakovikoff and Frank Stickwan, Native villages are required to select all available lands within a "core township." See § 12, ANCSA, 85 Stat. 701, 43 U.S.C. § 1611(a)(1) (1976). With respect to the allotment application of Elsie Stickwan, ALSC notes that the interim conveyance to the Native village corporation resolves any uncertainty as to ultimate selection by the village which, ALSC contends, served as the predicate for the Board's decision in State of Alaska, 41 IBLA 315 (1979).

While the contentions of ALSC as to the rights of the State of Alaska vis-a-vis a Native village corporation are generally correct, we would point out that there may be some exceptions. For example, if the State had obtained a tentative approval for its selection and either conveyed lands to a municipality or entered into a lease of the land to an individual with an option to buy, such land would not be available for Native selection. See generally Valid Existing Rights Under the Alaska Native Claims Settlement Act, Secretarial Order No. 3016, 85 I.D. 1 (1977). But in the absence of any allegation by

the State to the contrary, we must assume that the general propositions outlined above are applicable to all of the instant appeals.

This being the case, we agree that the State of Alaska does not have sufficient interest in the lands which are the subject of the Native allotment applications to enable it to maintain private contests. This holding, however, does not dispose of the entire matter. The Court in Koniag v. Andrus, supra, noted that the State of Alaska did have a sufficient interest to administratively attack decisions holding various villages qualified under ANCSA on the theory that subsequent selections by the State might be impeded if unqualified Native villages were awarded the grants made by the statute. We believe that such an interest is also present here. If the State were successful in attacking any of these Native allotment applications the Native villages would be required to select the land embraced by the allotment claim. This, in turn, would diminish their ability to select additional lands which the State might have already or might subsequently determine were desirable for selection under its statehood grant. Thus, while the State might not have a cognizable interest in the specific lands sought by the allotment applicant, the allowance of such an application might nevertheless adversely affect the State's interest within the meaning of 43 CFR 4.410.

In this situation, therefore, we feel that the proper procedure would be the filing of a "protest" to the allowance of the Native allotment application under 43 CFR 4.450-2. Should the State Office decline to entertain the protest by issuing a contest complaint against the Native allotment application, the State could pursue an appeal from that denial should it so wish. The State does not, however, have sufficient interest to maintain a private contest in the instant appeals and it was error for the State Office to advise the State of Alaska of a right to initiate a private contest. It is therefore clear, that to the extent that this Board's decision in State of Alaska, 42 IBLA 94 (1979), held that the State must make an election of remedies with regard to the three subject cases, that decision was in error.

It remains to be determined how our decision herein should be implemented in the immediate appeals. Recognizing the lengthy delays that have already occurred in the disposition of these cases, we, nevertheless, believe that the State must be accorded an opportunity to protest against the allowance of the instant Native allotments and the concomitant rejection of its selections to the extent of any conflict. It will be necessary for the State, in its protest, to provide specific justification for its contention that the Government should issue a contest complaint. Should the BLM State Office refuse to issue a Government contest, the State of Alaska may file a timely appeal with the Board.

Accordingly, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Board of Land Appeals, styled State of Alaska, 42 IBLA 94 (1979), is modified in accordance herewith, and the subject case files are remanded for further action not inconsistent with this opinion.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge